U.S. Department of Justice

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Southern District of Alabama

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Washington, D.C. 20530

In re: Clarence Aaron, Docket No. 93-00008

Dear Mr. Rodgers:

I have reviewed various documents submitted by Clarence Aaron in support of his Petition for Commutation of Sentence and agree that Aaron should receive a commutation of his life sentence. At the same time that Aaron has expressed remorse and submitted evidence of rehabilitation in prison – which is commendable – he also continues to minimize his own role in the offense and ignores the fact that his life sentence is directly due to his own refusal to accept responsibility for his actions and, instead, to perjure himself at both of his trials, a choice that enhanced his sentence and undermined his usefulness as a cooperating witness. Consequently, I recommend that Aaron be resentenced to a term of 25 years rather than the time served sentence that he seeks.[1] A lesser sentence would result in undue disparity with similarly situated defendants who are more deserving because they have fully acknowledged their own culpability, do not blame others for their own choices, are less culpable, or have chosen timely cooperation, as several of Aaron's co-defendants did.

Procedural History

Aaron was tried twice. The first trial resulted in a mistrial and the second in his conviction. At Aaron's first sentencing, the district court found that he was an organizer or manager of criminal activity that involved more than five individuals,

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[1] To date, Aaron has served approximately 15 years which, with credit for good behavior, is approaching a sentence of 18 years.

that he was responsible for at least 9 kilograms of crack cocaine and 15 kilograms of cocaine and that Aaron perjured himself on the stand. Aaron was sentenced to life without parole.

The Eleventh Circuit Court of Appeals upheld Aaron's conviction and vacated the case for re-sentencing, directing the district court to determine the conversion ratio for cocaine to crack cocaine. The Court further found that, although Aaron was responsible for converting the cocaine to crack cocaine, his co-defendant, Chisholm, was not. *United States v. Chisholm,* 73 F.3d 304 (11th Cir. 1996). On appeal, Aaron did not contest his upward role enhancements nor the finding by the district court that he perjured himself at trial. Aaron was resentenced to life without parole in July of 1996 and the Eleventh Circuit affirmed his re-sentencing in April of 1998.

In May of 2008, Aaron filed a motion for reduction of sentence, based upon 18 U.S.C. § 3582(c)(2), which permits the sentencing court to reduce a previously imposed sentence based upon a retroactive amendment to the United States Sentencing Guidelines. Aaron relied on Amendment 706, which reduced the base offense level for offenses involving less than 4.5 kilograms of crack cocaine. The Amendment, by limiting a guideline reduction for higher quantities of crack cocaine acknowledges the danger and seriousness dealers of larger quantities of crack cocaine, such as Aaron, pose to society. Because Aaron was involved with twice that amount of crack cocaine, he was ineligible for a sentence reduction. The district court denied his motion in September of 2008.

Equitable Factors

None of the traditional grounds identified in the U.S. Attorney's Manual for considering commutation apply here: "disparity or undue severity of sentence, critical illness or old age, [or] meritorious service rendered to the government." USAM §1-2.113. Instead, Aaron's Petition is supported by other equitable factors: evidence of remorse, rehabilitation in prison, the support of his family, and a desire to help others avoid the destructive decisions that he made. All of this is to his credit.

These equitable factors, however, must be balanced against his continuing effort to downplay his criminal activity. Aaron has repeatedly and publicly

minimized his role in the conspiracy and continues to do so even now by characterizing his role as "introducing its kingpin . . . to a drug supplier." Motion for Resentencing at 2. In 1999, Aaron told Frontline that he was "not directly" involved in drug trafficking and that "the only thing I can see I was involved in was introducing the two parties. As far as them making some type of transaction, whatever they wanted to get from each other, I don't know, but I did introduce the two parties." When asked by Frontline if the nine kilograms of cocaine ever existed, Mr. Aaron replied "No. I never had it." These statements conflict with the evidence at trial and the district court's finding that Aaron had a leadership role in organizing two large cocaine deals, converting 9 pounds of cocaine to crack, and then selling it.

Aaron's claim that he merely introduced a "kingpin" to a "drug supplier" is disingenuous. It is significant that Watts, a drug kingpin, went to Aaron when Watts' source of cocaine dried up. Watts went to Aaron for a reason: Months earlier, in May 1992, Watts asked co-conspirator Hines what Aaron had been "doing," which Hines understood to be a question about drug activity. Hines told Watts that Aaron had bought 18 ounces of crack cocaine from him in January 1992. Consequently, Watts and Hines went to Aaron for cocaine and they got what they were looking for. Aaron had ready connections to coconspirator Chisholm, in Baton Rouge, and ordered up 9 kilograms of cocaine. Aaron's involvement did not stop there. Aaron traveled from Mobile to Baton Rouge with $200,000 cash, arranged for someone to transport the $200,000 the remainder of the way from Baton Rouge to Houston, personally contacted the source in Houston, and arranged for someone to deliver the 9 pounds of cocaine back to Mobile. After the powder cocaine was converted to crack, Aaron provided the scale to weigh the crack cocaine and drove a coconspirator around to sell it.

Similarly, Aaron set up another 15 kilogram cocaine purchase and hired someone to transport the $250,000 in cash from Mobile to Texas. Trial testimony established that Aaron flew to Texas, arranged for the delivery of cocaine to take place in a hotel room, and left the hotel room shortly before two masked, armed robbers appeared at precisely the right time and hotel room and stole the $250,000 in cash. One of the conspirators testified that he saw Chisholm wink at the robbers, raising the inference that the robbery was an inside job. Notably, Aaron retained two defense lawyers for trial, although his Petition claims he comes from a humble background and committed the crime because he was in a desperate

financial position after his grandfather died and he gave up his inheritance.

In short, the facts presented at Aaron's trials demonstrate that he went well beyond making an introduction. He was instrumental in organizing a 9 and 15 kilogram cocaine deal for a "drug kingpin" who needed an alternate source. These deals – substantial by any measure – are not consistent with a first-timer's foray into the cocaine world. The trial testimony, the experience of the veteran prosecutor in this case, and common sense belie the notion that an individual can readily set up a 9 and 15 kilogram cocaine deal for a drug kingpin without having the experience and a background in drug activity. There is no reason to question Aaron's actions or guilt. His minimization shows a genuine reluctance to come to terms with the scope of the conspiracy and his own role in it and undermines the weight to be accorded to his acceptance of responsibility and expressions of contrition.

Aaron also argues for clemency based upon the claim that he was convicted of a "nonviolent" drug conspiracy. (Aaron's Supplemental Memorandum in Support of Amended Petition, Page 1, November 21, 2007). The armed robbery of the $250,000 in cash – inside job or not – is a testament to the violence that accompanies drug trafficking. Aaron's crime was not nonviolent.

Aaron claims that he wanted to enter a guilty plea but was not given the opportunity to do so. Aaron was given ample opportunity to enter a guilty plea, with or without cooperation; either way he would have avoided a life without parole sentence. Despite Aaron's claims to the contrary, his plea offer was not contingent upon cooperation. Had Aaron entered a guilty plea, he would have received a reduction in his guideline range for acceptance of responsibility and would not have received an enhancement for obstruction of justice for testifying falsely at trial.

Aaron has also repeatedly claimed that he could not reduce his sentence by cooperation because he had no one to provide information about. This is not true. Prior to his second sentencing in 1996, Aaron was debriefed by the FBI and provided drug information on two individuals in Baton Rouge. That information was not used by the Baton Rouge U.S. Attorney's Office because Aaron had twice committed perjury under oath when he testified falsely at his two trials. Aaron's decision to perjure himself diminished his ability to cooperate. Further, for some

unknown known reason, Aaron alleges that he was taken by defense attorney Bob Clark to a "police station" where he and Clark viewed codefendant Chisholm, via a two-way mirror, being interviewed by the FBI. The FBI did not interview Chisholm and Attorney Clark told the prosecutor who tried Aaron that this did not happen.

Aaron argues that his sentence is disproportionate to the sentence of his codefendants. He fails to note that, unlike himself, some of these codefendants had a lesser role in the conspiracy, pled guilty, did not perjure themselves at trial or provided substantial assistance in this case and against other individuals as well.

Aaron's failure to accept full responsibility for his crimes weighs heavily against commutation to a time-served sentence. The commutation of Aaron's sentence to time served while he continues to claim that he was minimally involved, despite clear and overwhelming evidence to the contrary, would not only send the wrong message to society at large, it would reward an individual who has downplayed his own criminal behavior.

As Aaron's counsel acknowledges, Aaron should "be resentenced to a substantial term of incarceration but not to a life sentence." Motion for Resentencing at 13. While I believe Aaron should receive some reduction, I respectfully recommend against the granting of his request for time served and recommend a 25 year sentence. This fairly balances his rehabilitation against the seriousness of the offense, his minimization, and the sentences of other defendants in this district.[2] Finally, since Aaron has already served time equal to a sentence of close to 18 years, it will also allow for a structured transition from incarceration to release.

Very truly yours,

DEBORAH J. RHODES
UNITED STATES ATTORNEY

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[2] Codefendant Chisholm, who was not held responsible for the conversion of cocaine to crack cocaine, is serving a sentence of 24 years and 4 months.